

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-323-WS - ORDER NO. 2013-2
JANUARY 15, 2013

IN RE: Application of Kiawah Island Utility,)	ORDER APPROVING
Incorporated for Retroactive Approval of the)	CONTRACT NUNC PRO
Cougar Island Aquifer Storage and Recovery)	TUNC
(ASR) System Site Purchase)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Application of Kiawah Island Utility, Inc. (“Applicant” or “KIU”) for retroactive approval of its purchase of the Cougar Island Aquifer Storage and Recovery (“ASR”) System Site from Kiawah Resort Associates, L.P. on November 2, 2010. KIU filed this Application pursuant to 26 S.C. Code Ann. Regs. 103-743 (Supp. 2011).

The matter of the approval of the purchase came to light in Docket No. 2011-317-WS. Order No. 2012-98 in that Docket stated as follows:

We do take issue with allowance of any expenses for the purchase of the Cougar Island tract. 26 S.C. Code Ann. Regs. 103-743 (Supp. 2011) requires that no utility shall execute or enter into any agreement or contract which would impact the utility’s fitness, willingness, or ability to provide water service, without first submitting said contract in form to the Commission and the ORS and obtaining approval of the Commission. In the present case, the Company entered into an agreement wherein it would purchase the Cougar Island tract for future ASR purposes. This clearly impacts the Company’s ability to provide water service. The Company failed to submit the contract for approval by this Commission, in violation of the regulation. Accordingly, we hold that all expenses for the Cougar Island tract must be disallowed. Should KIU wish to recover these expenses in future rate cases, it must submit the contract to this

Commission for approval first. Then we may consider whether or not the expenses are appropriate in the Company's next rate case.

Order No. 2012-98 at 12-13.

On August 28, 2012, KIU filed its Application in the present Docket, seeking retroactive approval of the 2010 purchase of the Cougar Island ASR site. By letter dated September 13, 2012, the Commission's Clerk's Office instructed KIU to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by KIU's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. In the letter of September 13, 2012, the Commission also instructed KIU to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing. KIU filed Affidavits of Publication demonstrating that the Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers.

In response to the Notice of Filing, on the last day of the Commission-ordered intervention period, the Town of Kiawah Island filed a "request to reserve its right to intervene," but did not file a petition for intervention at that time. Two weeks later, the Town of Kiawah Island filed a Petition to Intervene Out of Time. This Commission issued Order No. 2012-901, denying the late intervention. Therefore, the only other party to this matter is the Office of Regulatory Staff ("ORS"), which is a party by law. See S.C. Code Ann. Section 58-4-50 (4) Supp. 2011.

By letter dated December 11, 2012, ORS stated that it had no objection to Commission approval *nunc pro tunc*; however, the agency reminded KIU's management that such requests should not become normal practice and Commission rules and regulations are to be adhered to at all times. ORS noted that KIU ratepayers are not paying for any costs related to the Cougar Island property purchase, but that ORS would make a recommendation during KIU's next rate case as to what amounts, if any, are appropriate to be borne by KIU's ratepayers as a result of the Cougar Island property purchase.

Accordingly, after considering this matter, we approve the purchase by KIU of the Cougar Island ASR System Site *nunc pro tunc*. There is no opposition to this Application. We would note that there is no prejudice created by this approval, since the matter of coverage of the expenses of the Cougar Island ASR System Site may be considered in the Company's next rate case. Any party to that case may provide evidence on this subject.

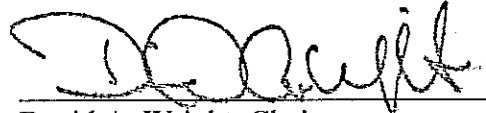
We do, however, take this opportunity to state that we do not consider *nunc pro tunc* requests for approval of contracts such as this one to be acceptable normal practice. S.C. Code Ann. Regs. 103-541 and 103-743 require prior approval of the Commission for such property purchases, and we agree with ORS that Kiawah Island Utility, Inc. is expected to adhere to these and all other Commission regulations going forward.

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This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


David A. Wright, Chairman

ATTEST:


Randy Mitchell, Vice Chairman
(SEAL)